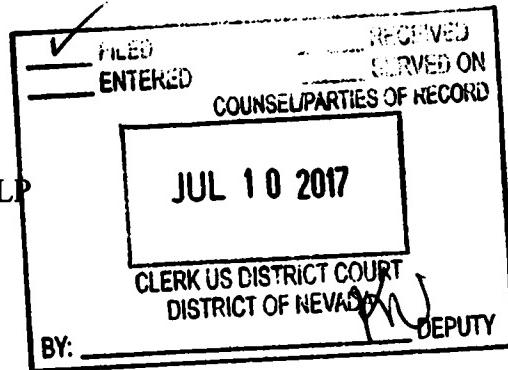


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7 **UNITED STATES DISTRICT COURT**

9 **DISTRICT OF NEVADA**

10 3:17-ms-00007

11 YOUTOO TECHNOLOGIES, LLC,

CASE NO.

12 Plaintiff,

13 DEFENDANT TWITTER, INC.'S MOTION  
 14 v.  
 15 TO COMPEL STRATEGIC GAMING  
 16 TWITTER, INC.,  
 17 MANAGEMENT LLC TO PRODUCE  
 18 Defendant.  
 19 DOCUMENTS PURSUANT TO FED. R.  
 20 CIV. P. 45

21 Defendant Twitter, Inc. ("Twitter" or "Defendant") hereby moves the Court to compel  
 22 Strategic Gaming Management LLC ("Strategic Gaming") to produce documents responsive to  
 23 Twitter's subpoena in the patent infringement litigation brought by Youtoo Technologies, LLC  
 24 ("Youtoo") against Twitter, which remains pending as Case No. 3:16-cv-00764-N in the United  
 25 States District Court for the Northern District of Texas ("the Litigation").

26 **I. INTRODUCTION**

27 Strategic Gaming is a Nevada company that, along with its affiliate Trestle Creek  
 28 Properties, LLC, loaned hundreds of thousands of dollars to Youtoo's parent company in 2015.  
 The loans were secured in part by a security interest in Youtoo's patent portfolio, including the  
 patents-in-suit. Based on Strategic Gaming's limited production to date, it appears that the loans  
 were in default as of November 2015, and Strategic Gaming claimed a lien on the patents. That  
 lien apparently was not terminated until October 2016, more than six months after Youtoo filed  
 suit against Twitter on March 18, 2016.

7/10 Amt \$ 47<sup>00</sup> Date 7/10/2017  
 MRN# 3743 Initials QJM  
 Receipt #

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1       The question of who held rights to the patents-in-suit on the day that Youtoo initiated the  
2 Litigation goes to the threshold issue of standing. To the extent that Strategic Gaming (or some  
3 other third party) retained rights to the Youtoo patents as of March 2016, Youtoo may have  
4 lacked standing to sue Twitter and the underlying patent infringement case should be dismissed.

5       Based on Strategic Gaming's apparent rights and interests in the patents-in-suit, Twitter  
6 issued a narrowly-tailored subpoena to Strategic Gaming to obtain documents related to Strategic  
7 Gaming's ownership and security interest in the patents-in-suit, and any other documents relating  
8 to the patents-in-suit, including valuations, and infringement and invalidity analyses. The  
9 documents sought by Twitter are relevant to multiple core issues in the Litigation, including  
10 ownership of and rights to the patents-in-suit, the scope of the patents, patent validity, the alleged  
11 infringement, and damages. The court overseeing the Litigation has already granted Twitter's  
12 motions to compel similar documents from Youtoo and another third-party, finding that the  
13 requests were relevant, and not overly broad or unduly burdensome. *See, e.g., Order, Youtoo*  
14 *Techs., LLC v. Twitter, Inc.*, No. 3:16-CV-00764-N (N.D. Tex. May 31, 2017), ECF No. 95 &  
15 Order, *Youtoo Techs., LLC v. Twitter, Inc.*, No. 3:17-mc-00009-BF (N.D. Tex. June 13, 2017),  
16 ECF No. 18. Yet, to date, Strategic Gaming has produced only the promissory notes with  
17 Youtoo, two letters, and UCC financing statements.

18       Nearly four months have passed since Strategic Gaming received Twitter's document  
19 subpoena. It has been more than three months since Strategic Gaming's counsel—the same  
20 lawyers that represent the plaintiff Youtoo in the underlying litigation—promised to investigate  
21 what responsive documents Strategic Gaming would produce. Having heard only silence for  
22 most of this time, only to receive an untimely and limited production from Strategic Gaming,  
23 Twitter is forced to bring this motion to compel.

24 **II. FACTUAL BACKGROUND**

25       **A. Strategic Gaming Loaned Hundreds of Thousands of Dollars, Secured with  
26 Youtoo's Patent Portfolio, and That Loan Went Into Default.**

27       Beginning at least as early as 2012, Youtoo parent company, Youtoo Media LP ("Youtoo  
28 Media"), and other Youtoo affiliates, began borrowing millions of dollars from a number of third-

1 party lenders,<sup>1</sup> and secured those loans with Youtoo's patent portfolio. See Miller Decl. Ex. 1<sup>2</sup> ¶¶  
2 15–17. In 2015, Youtoo and Youtoo Media borrowed more than \$500,000 from Strategic  
3 Gaming and its affiliate, Trestle Creek Properties, LLC. *Id.* ¶ 17. These loans were guaranteed  
4 and secured by Youtoo's portfolio of patents and patent applications, including the three patents  
5 that have been asserted against Twitter in the Litigation. *Id.*

4 [REDACTED] . Based on the UCC Financing  
5 Statements produced by Strategic Gaming, it appears that Strategic Gaming's lien was not  
6 terminated until October 4, 2016, more than six months after Youtoo filed suit against Twitter.  
7 Miller Decl. Ex. 4.

**B. Twitter Served a Subpoena on Strategic Gaming, and Strategic Gaming's Counsel Agreed to Produce Responsive Documents.**

On March 2, 2017, Twitter prepared and served a document subpoena on Strategic Gaming. Miller Decl. Ex. 5. The subpoena included narrowly-tailored document requests regarding Strategic Gaming and Youtoo's agreements, the rights held by various parties to the patents-in-suit, potential licensing and sales of the patents-in-suit, infringement and invalidity analyses of the patents-in-suit, and any valuations of Youtoo and the patents-in-suit. *See id.*

<sup>1</sup> Two of those lenders, Covenant Global Alpha Fund, L.P. and Heartland Bank were also served subpoenas by Twitter. As with Strategic Gaming, they have failed to produce promised responsive documents, and so are the subject of separate motions to compel. All three lenders are represented by Youtoo's litigation counsel.

<sup>2</sup> Exhibit 1 to the Miller Declaration is a declaration of Christopher Wyatt, Youtoo's then-CEO, filed publicly in separate litigation in the Northern District of Texas, *Mansour Bin Abdullah Al-Saud v. Youtoo Media, L.P.*, No. 3:15-cv-03074-C (N.D. Tex. Oct. 1, 2015), ECF No. 12-1.

1       Samuel E. Joyner, of the Carrington Coleman law firm (which also represents Youtoo in  
2 the Litigation), responded to Twitter with a letter on March 30, 2017 listing Strategic Gaming's  
3 responses and boilerplate objections to the subpoena. Miller Decl. Ex. 6. On March 30, 2017,  
4 counsel for Twitter and Strategic Gaming—who participated on behalf of not only Strategic  
5 Gaming but also Youtoo and other third parties subpoenaed by Twitter—met and conferred to  
6 discuss Twitter's subpoena to Strategic Gaming. Miller Decl. ¶¶ 2–3. During that meet and  
7 confer, Strategic Gaming raised objections that bordered on frivolous—for instance, Strategic  
8 Gaming objected to Twitter's subpoena because Twitter supposedly did not formally define  
9 entities that Twitter had in fact specifically identified by name and corporate form in the bodies of  
10 the requests (e.g., “Covenant Global Alpha Fund, L.P.” and “Strategic Gaming Management,  
11 LLC”), going so far as to argue that Twitter was required to provide in its subpoena the “state of  
12 incorporation” of non-natural entities described in the request. *Id.* Nonetheless, Strategic  
13 Gaming agreed to investigate the responsive documents it possessed and would produce in  
14 response to Twitter's subpoena.<sup>3</sup> *Id.* ¶ 3.

15        Five weeks passed after the March 30, 2017 meet and confer. Strategic Gaming neither  
16 produced documents nor communicated with Twitter regarding the status of its compliance with  
17 the subpoena. *Id.* ¶ 4. So, on May 4, 2017, Twitter sent a letter to Strategic Gaming’s lawyers  
18 outlining the agreements reached on March 30 regarding the scope of the subpoena and  
19 requesting prompt compliance with Twitter’s subpoena. Miller Decl. Ex. 7. Mr. Joyner  
20 responded via email on Friday, May 12, 2017, promising to respond by the “beginning of next  
21 week.” Miller Decl. Ex. 8. Then, on Wednesday, May 17, 2017, Mr. Joyner followed up with a  
22 brief email that stated in full: “I’m still working on the issues regarding your subpoenas. You  
23 will have a response by Friday.” Miller Decl. Ex. 9. Despite Strategic Gaming’s counsel  
24 promising a “response” by Friday, May 19, 2017, none followed. Miller Decl. ¶ 4. Finally, on  
25 June 14, 2017, Strategic Gaming’s counsel confirmed that Strategic Gaming would produce “non-

<sup>3</sup> Although Strategic Gaming initially objected to the subpoena as violating Federal Rule of Civil Procedure 45(c)(2) because the subpoena specified San Francisco, California as the location for the document production, Strategic Gaming has not stood on this objection. See Miller Decl. Ex. 7.

1 privileged, responsive documents.” Miller Decl. Ex. 10. Twitter’s counsel immediately followed  
 2 up asking for confirmation that the search for and production of documents would not be  
 3 narrowed based on any objections. *Id.* Strategic Gaming again failed to respond. Miller Decl. ¶  
 4 5.

5 Upon reviewing Strategic Gaming’s production, however, Twitter learned that Strategic  
 6 Gaming has failed to produce documents corresponding to at least the following categories  
 7 requested in the subpoena (Miller Decl. Ex. 5):

- 8       (1) Communications between Strategic Gaming, Youtoo, and/or any other third-party  
        9 regarding any interest in the Youtoo patents (*see, e.g.*, Request Nos. 1–3, 21–26,  
        28);
- 10      (2) Documents relating to the decision to initiate the patent infringement case against  
        11 Twitter (*see, e.g.*, Request No. 5);
- 12      (3) Documents sufficient to show Strategic Gaming’s interest, financial or otherwise,  
        13 in the Youtoo Patents and/or the outcome of the Twitter patent litigation (*see, e.g.*,  
        Request Nos. 1–3, 7–8, 11, 13–14, 19–20); and
- 14      (4) Documents relating to any potential sale or monetization of the patents-in-suit  
        15 (*see, e.g.*, Request Nos. 7–10, 13–18, 20, 28).

16 Twitter followed up with Strategic Gaming’s lawyers on June 16, 2017 asking them to  
 17 confirm that all responsive documents—including all communications with Youtoo—would be  
 18 forthcoming as promised months before. Miller Decl. Ex. 11. Rather than addressing the failure  
 19 to produce communications or to answer directly Twitter’s question concerning Strategic  
 20 Gaming’s search, Strategic Gaming’s lawyers simply asserted—ten days later—that “we  
 21 produced the documents in Strategic Gaming Management, LLC’s possession of which it was  
 22 aware that were responsive to Twitter’s March 16, 2017 document subpoena (even though it was  
 23 defective). No documents were withheld on the basis of privilege or immunity.” Miller Decl. Ex.  
 24 10.

25 Twitter again attempted to schedule a telephonic meet and confer to resolve these issues  
 26 on June 27, 2017. Miller Decl. ¶ 7. Strategic Gaming agreed to the meet and confer. *Id.* In view  
 27 of the tenor of prior meet and confers, Twitter also told Strategic Gaming that it would schedule a  
 28 court reporter to transcribe the call. *Id.* Twenty-five minutes before that call was to take place,  
 Strategic Gaming’s counsel abruptly cancelled. Miller Decl. Ex. 12 at 1 & ¶ 7. Twitter again

1 followed up on July 3, 2017, asking once more for Strategic Gaming to explain the scope of its  
 2 document production. Miller Decl. Ex. 10. To date, Twitter has not received a response to this  
 3 email. Miller Decl. ¶ 7. Given the extraordinary delay and failure to participate in discovery,  
 4 Twitter is forced to bring this motion.

5 **III. ARGUMENT**

6 Third-party discovery is governed by Federal Rule of Civil Procedure 45. The scope of  
 7 discovery through a Rule 45 subpoena is the same as the scope permitted under Federal Rule of  
 8 Civil Procedure 26(b). *See, e.g., Am. Fed'n of Musicians v. Skodam Films, LLC*, 313 F.R.D. 39,  
 9 43 (N.D. Tex. 2015).

10 Twitter has diligently pursued production of the subpoenaed documents from Strategic  
 11 Gaming to little avail. Despite Twitter's repeated attempts to discuss its requests and efforts to  
 12 reach a compromise, Strategic Gaming has continued to delay and refuses to answer basic  
 13 questions about its search for and production of documents. Twitter thus respectfully requests  
 14 that the Court order Strategic Gaming to immediately produce all documents responsive to  
 15 Twitter's subpoena.

16 **A. The Discovery Sought By Twitter Goes to Core Issues in This Litigation.**

17 As Twitter explained to Strategic Gaming during the parties' March 30, 2017 meet and  
 18 confer (and later memorialized in Twitter's May 4, 2017 letter), the subpoena calls for documents  
 19 directly related to fundamental issues such as patent ownership and standing to sue, claim scope,  
 20 patent validity and infringement, and damages. Miller Decl. Ex. 7 & ¶ 2. Without standing on  
 21 any objections or stating an intention to withhold any documents, Strategic Gaming's counsel  
 22 promised to investigate what responsive documents Strategic Gaming would produce for all of  
 23 the requests in Twitter's subpoena. Miller Decl. ¶ 3. To date, Strategic Gaming has failed to  
 24 produce any documents.

25 *First*, many of the requests in the subpoena call for Strategic Gaming's documents  
 26 relating to the threshold issues of patent ownership and standing to sue for patent infringement.  
 27 See, e.g., Request Nos. 1–3, 5, 7–9, 11, 13–14, 19, 21–22, 23–25, 27–28. *See* Miller Decl. Ex. 5.  
 28 During the parties' meet and confer on these issues, Twitter explained its concerns that Youoo

1 may not have standing to sue because of the various ownership and security interests held by  
 2 other entities in the patents-in-suit, including Strategic Gaming. But neither Youtoo nor Strategic  
 3 Gaming (or their lawyers) have ever responded substantively to Twitter's concerns. *See* Miller  
 4 Decl. Ex. 7. Discovery about the ownership of and leverage on the patents-in-suit is relevant as a  
 5 threshold matter—it is a basic element of determining who has standing to bring patent  
 6 infringement claims in the first place. *See InternetAd Sys., LLC v. Opodo Ltd.*, 481 F. Supp. 2d  
 7 596, 605 (N.D. Tex. 2007) (patent standing requires “determin[ing] whether all substantial rights  
 8 have been transferred to [the party asserting claims of infringement]”). If Youtoo itself does not  
 9 (or did not at the time it filed suit) actually possess substantial control of the patents-in-suit, it has  
 10 no standing to assert the patents and its claims must be dismissed—or (alternatively) Youtoo  
 11 would be required to join the actual patent owner (e.g., Strategic Gaming) to the case as a co-  
 12 plaintiff. *See id.*

13       ***Second***, Twitter's subpoena is directed to topics relevant to basic issues of liability,  
 14 including claim construction, validity, and infringement. For example:

- 15           • “Documents relating to any infringement search, study, analysis, evaluation,  
             investigation, or opinion related to any portion of the subject matter disclosed or  
             claimed by any of the Youtoo Patents” (Request No. 15);
- 16           • “Documents relating to any investigation, testing, analysis, study, examination, or  
             reverse engineering, conducted by or on behalf of You, Youtoo and/or AQUA, of  
             any Twitter product or technology” (Request No. 16);
- 17           • “Documents relating to the patentability, validity, invalidity, enforceability,  
             unenforceability, scope, or interpretation of any of the Youtoo Patents” (Request  
             No. 17); and
- 18           • “Documents disclosed to, provided to, reviewed by, or prepared by any engineer,  
             expert, or consultant in connection with any of the Youtoo Patents” (Request No.  
             18).

19       Strategic Gaming may have acquired such documents in connection with its substantial loans to  
 20 Youtoo, secured by the patents-in-suit. Strategic Gaming has made no effort to contest the  
 21 relevance of these documents during the parties' discussions following Strategic Gaming's initial  
 22 response and objections to Twitter's subpoena, nor can it.

23       ***Third***, Twitter's subpoena seeks information relevant to the damages analysis in the  
 24 Litigation. *See, e.g.*, Miller Decl. Ex. 5 (Request Nos. 1–3, 5, 7–14, 20–22, 24–25, 27–28).

1 Twitter's subpoena seeks, among other things, "any valuation or monetary assessment of the  
 2 subject matter disclosed or claimed by any of the Youtoo patents," communications between  
 3 Strategic Gaming and Aqua licensing regarding the Litigation, and any agreements between  
 4 Strategic Gaming and other entities regarding the patents-in-suit. These documents go to the  
 5 heart of the damages analysis in the Litigation, and Strategic Gaming has made no sustainable  
 6 objection to the contrary.

7 In sum, Strategic Gaming cannot deny the relevance of the requested documents. Its  
 8 lawyers did not stand on relevance objections to any of Twitter's requests during the March 30,  
 9 2017 meet and confer, and they can credibly not do so now. Miller Decl. ¶ 3.

10 **B. Complying With Twitter's Subpoena Presents No Undue Burden.**

11 Twitter's document requests ask for a small set of specific and easily identifiable  
 12 documents in Strategic Gaming's possession, custody, and control. Strategic Gaming has not  
 13 articulated any credible basis for its refusal to produce documents. There is no undue burden to  
 14 Strategic Gaming in complying with Twitter's subpoena, and Strategic Gaming's lawyers have  
 15 not argued otherwise. *Id.* Indeed, in neither the parties' telephonic meet and confer nor at any  
 16 point since, has Strategic Gaming even contended that there would be undue burden associated  
 17 with searching for and producing the requested documents, let alone articulated what that burden  
 18 is or why it is disproportional to the needs of the case.<sup>4</sup>

19 **IV. CONCLUSION**

20 Despite Twitter's attempt to compromise with Strategic Gaming and to explain the  
 21 reasonableness and scope of its subpoena, Strategic Gaming has failed to produce responsive  
 22 documents. Compounding this deficiency, Strategic Gaming's counsel simply ignored repeated  
 23 requests from Twitter to discuss the issues and refused to answer basic questions about Strategic  
 24 Gaming's document search and production. Twitter respectfully requests that the Court require

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25  
 26 <sup>4</sup> Strategic Gaming could have filed a motion to quash or a motion for protective order, but did  
 27 not do so. See, e.g., *Total Rx Care, LLC v. Great N. Ins. Co.*, 318 F.R.D. 587, 594 (N.D. Tex.  
 28 2017) (party moving to quash subpoena has "burden of proof" to show undue burden); *Am. Fed'n of Musicians*, 313 F.R.D. at 44 ("The party opposing discovery must show how the requested discovery was overly broad, burdensome, or oppressive by submitting affidavits or offering evidence revealing the nature of the burden.").

1 Strategic Gaming to immediately produce all documents responsive to Twitter's subpoena.

2 Dated: July 10, 2017

BROWNSTEIN HYATT FARBER  
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3 By:

  
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10 Attorneys for Defendant  
11 TWITTER, INC.  
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**CERTIFICATE OF SERVICE**

Pursuant to FRCP 5(b) the undersigned certifies that on this date a true and correct copy of the foregoing document, **DEFENDANT TWITTER, INC.'S MOTION TO COMPEL STRATEGIC GAMING MANAGEMENT LLC TO PRODUCE DOCUMENTS PURSUANT TO FED. R. CIV. P. 45**, will be served upon counsel of record below-listed via the following:

**Chijioke Ekenedilichukwu Offor**  
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*Counsel for Youtoo Technologies, LLC and  
Strategic Gaming Management LLC*

---

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- VIA FIRST CLASS U.S. MAIL:** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Reno, Nevada.
  - VIA FACSIMILE:** by transmitting to a facsimile machine maintained by the person on whom it is served at the facsimile machine telephone number as last given by that person on any document which he/she has filed in the cause and served on the party making the service. The copy of the document served by the facsimile transmission bears a notation of the date and place of transmission and the facsimile telephone number to which transmitted.
  - BY PERSONAL SERVICE:** by personally hand-delivering or causing to be hand delivered by such designated individual whose particular duties include delivery of such on behalf of the firm, addressed to the individual(s) listed, signed by such individual or his/her representative accepting on his/her behalf. A receipt of copy signed and dated by such an individual confirming delivery of the document will be maintained with the document and is attached.
  - VIA ELECTRONIC SERVICE:** by electronically filing the document with the Clerk of the Court using the ECF system which served the parties above-listed.
  - VIA ELECTRONIC SERVICE:** as an attachment to electronic mail directed to counsel of record for the parties herein at the email addresses listed above.

DATED: July 10, 2017

/s/ Jeff Tillison   
An Employee of Brownstein Hyatt Farber Schreck, LLC